IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 187 of 1988

Date of Decision: 25-11-2004

RAHABHAI VAMABHAI @ RAMABHAI BHARWAD

Versus

ANILBHAI ENDRUS PARMAR

Coram:

The Hon'ble Mr. Justice Bhawani Singh, Chief Justice

The Hon'ble Mr. Justice H.K. Rathod, Judge

Whether approved for reporting?

For the appellant:

MR HM PARIKH

For the Respondents:

MR SHALIN N MEHTA

PER: BHAWANI SINGH, CHIEF JUSTICE (ORAL):-

1. This Appeal is directed against the judgment of Motor Accident Claims Tribunal (Main) of Kheda at Nadiad in Motor Accident Claims Petition No.177 of 1983 dated 15-01-1986.

2. Claimant suffered injuries as a result of

Whether Reporters of Local Papers may be allowed to see the Judgment?

accident involving Tractor bearing Registration No.GTM 6109 and Scooter bearing Registration No.GRM 115 driven by Sura @ Raja Rama Bharwad. It is alleged that Scooter was being driven at a moderate speed. However, the Tractor driven rashly and negligently hit the Scooter and thrown away the Scooter driver and the claimant, resulting in grievous injuries and fracture to the left leg of the claimant. He was taken to the Hospital and Medical Research Centre Charutar Arogya Mandal, Karamsad. After causing the accident, the Tractor driver fled away. Claimant was hospitalised for a long period as an indoor patient, underwent operations, medical treatment and physiotherapy. He was not able to follow his ordinary pursuits. He was serving as Turner, but could not resume his duties due to hospitalisation. A rod was inserted in his leg. Permanent disability, pain, suffering and loss of income are stated amongst the facts by the claimant claiming compensation of Rs.1,25,000/-. Claim has been resisted by the respondents, particularly the Insurance Company. Others had adopted the written statement of the Insurance Company stating interalia that accident did not take place as alleged, Tractor was driven at moderate speed, Scooter was driven rashly and negligently at excessive speed resulting in the accident, Scooter driver did not possess driving licence and compensation claim is highly exaggerated. Claims Tribunal found that the accident was caused as alleged, therefore, held that claimant is entitled to compensation of Rs.42,270/- with running interest @ 6% from the date of application till payment.

3. Through this Appeal, the judgment and award of the Tribunal has been assailed. Shri Shalin Mehta, learned counsel for the Insurance Company, contended that the Claims Tribunal found that the claimant was not telling truth with regard to the manner in which the accident took place and his statement that he turned to right to avoid the accident was given simply to state that he tried to avoid the accident. The driver of the Tractor has been held to be negligent, but contributory negligence has not been considered while awarding the compensation. With regard to compensation, learned counsel for the Insurance Company submitted that in the totality of circumstances, compensation should be reduced, while learned counsel for the claimant submits that compensation be increased taking into consideration

the injuries, pain and suffering, medical expenses, transportation charges, loss of income, special diet, etc.

4. Submissions advanced by the learned counsel for the parties considered. From the evidence, it seems clear that the Claims Tribunal has found that the Claimant has also contributed to the accident, otherwise, it could be avoided. After taking this view against Issue No.1, the Tribunal while giving finding against Issue No.2 lost sight of this fact though the claimant, apart from suffering from injuries, pain and suffering, loss of income, incurring medical expenses, transportation charges, special diet, etc, has been permanently disabled and lost his job. Therefore, we are of opinion that the Claims Tribunal has committed serious error on this aspect of the case, and proceed to hold that the claimant contributed equally to the accident.

5. The next question for determination is compensation. Claimant was 30 year old at the time of accident. He was working as Turner. As a result of the accident, he suffered fracture in left leg, admitted in hospital, remained there for long period as an indoor patient, underwent operations, physiotherapy, rod inserted, therefore, the whole process was painful. He must have spent on medical treatment, transport, special diet, attendants and suffered loss of income. Because of the disability, his service was discontinued by the employer. The doctor has mentioned the injuries suffered by the claimant. There is shortening of left leg by one and half inch. Consequently, claimant is likely to suffer social stigma and difficulty in walking, and functioning of leg for years to come. With this background, just compensation has not been awarded by the Tribunal.

Consequently, the Appeal is partly allowed. We award a lumpsum amount of Rs.1,04,540/- to the claimant. The petitioner having contributed equally to the accident, compensation is reduced by half, thus, the claimant is entitled to a compensation of Rs.52,270/-. The excess compensation will carry interest @ 6% from the application till payment.

There shall be no order as to costs.

(BHAWANI SINGH)
CHIEF JUSTICE

(H.K. RATHOD)
JUDGE

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